

GENERAL PERMIT AUTHORIZATION FOR STORM WATER DISCHARGES
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE
LAWS OF THE STATE OF DELAWARE
TIER I GENERAL PERMIT

In compliance with the provisions of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (33 U.S.C. §§ 1251 et seq.), hereinafter referred to as “the Act”, and pursuant to the provisions of Title 7, Del. C., § 6003, the Delaware Department of Natural Resources and Environmental Control (the Department) authorizes designated small municipal separate storm sewer systems (MS4s), collectively and severally, as permittees, to discharge storm water from all portions of the municipal separate storm sewer system located in Delaware that are owned, operated or maintained by any of the covered permittees to waters of the State of Delaware and that are located within the boundaries of the designated MS4 in accordance with the comprehensive storm water pollution prevention and management program, the discharge limitations, monitoring requirements and other provisions set forth in Parts I, II, III, IV, V, and VI herein.

Only small municipal separate storm sewer systems that submit a Notice of Intent and a Storm Water Pollution Prevention and Management Program in accordance with Part I.E. and Part II of this permit and obtain written authorization from the Department are authorized under this General Permit.

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Date Signed

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Part I. Discharges Authorized By This Permit

A. Geographic Area Covered

This General Permit (“permit”) covers regulated small municipal separate storm sewer systems (MS4s), defined at 40 C.F.R. §122.26(b)(16), located within the State of Delaware. A small MS4 is “regulated” if it is: (1) currently discharging storm water pursuant to an individual NPDES MS4 Permit issued by the Department prior to the issuance of this General Permit; and (2) located in an “urbanized area” as determined by the most recent Decennial Census by the U.S. Bureau of the Census (40 C.F.R. §122.32(a)(1)); or (3) outside of an urbanized area but designated as a regulated small MS4 by the NPDES permitting authority (40 C.F.R. §122.32(a)(2)). This permit applies to:

- 1) systems owned by incorporated cities and towns;
- 2) designated MS4s including non-traditional MS4s (such as state highways, universities, military bases, or prisons);
- 3) systems owned by a state or county; and/or
- 4) systems owned by state transportation agencies.

B. Authorized Discharges

- 1) This permit authorizes the discharge of storm water from regulated small MS4s if:
 - a) the permittee is the operator of a small MS4 that is currently discharging storm water pursuant to an individual NPDES MS4 Permit issued by the Department prior to the issuance of this permit (including DE0051152, DE0051144, DE0051161, and DE0051209 which are hereby subsumed into this permit);
 - b) the permittee is the operator of a small MS4 that is currently discharging storm water within the permit areas described in Part I.A;
 - c) the permittee is not a large or medium MS4 within the permit areas; and
 - d) the permittee submits a Notice of Intent (NOI) in accordance with Part I.E of this permit and obtains written authorization to discharge from the Department.
- 2) Limitations On Coverage

The following discharges, whether discharged separately or commingled with municipal storm water, are not authorized by this permit:

a) Non-Storm Water and Industrial Storm Water:

Discharges of materials other than storm water, discharges of storm water associated with industrial activity or other storm water discharges which are required to obtain a NPDES permit, except where such dischargers are:

- i) regulated by a separate NPDES permit or the discharger has applied for such a permit;
- ii) covered under the Department's NPDES General Permit Program Regulations; or
- iii) identified by and in compliance with Part II.C.2 (a)(iii) of this permit.

b) Spills

Where the discharge of materials resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage, the permittee shall take all reasonable steps to prevent, minimize, and remediate any adverse effects on human health or the environment. This permit does not transfer the liability for the spill itself from the party(ies) responsible for the spill nor relieve the party(ies) responsible for the spill from the reporting requirements under 7 Del. C. Chapter 60, §6028.

- c) Discharges shall not cause, or have the reasonable potential to cause, or contribute to an exceedance or violation of any applicable surface water quality standards, including but not limited to:
- i) discharges of substances or materials in amounts that are toxic, or that would be toxic to humans, fish, aquatic life or wildlife as defined in the Delaware Surface Water Quality Standards (SWQS);
 - ii) discharges of floatable debris, oils, scum, foam, or grease in other than trace amounts; and
 - iii) discharges that cause or contribute to degradation or loss of State-designated beneficial uses.

C. Permittee Responsibilities

- 1) The permittee is responsible for compliance with all permit conditions.
- 2) When two or more entities are co-permittees within an area covered by a single written NOI Authorization to Discharge from the Department, each permittee is responsible for:

- a) Compliance with permit conditions.
- b) Good faith dealings with co-permittees, including but not necessarily limited to attendance of meetings on shared responsibilities, timely review and approval of actions and documents proposed by the co-permittees, compliance with deadlines for fulfilling individual obligations on joint efforts.
- c) Compliance with all permit terms relating to the permittee's facilities, including those proposed for joint fulfillment in the Storm Water Pollution Prevention and Management Program (SWPP&MP), regardless of the conduct of co-permittees or their failure to fulfill their obligations.
- d) Specifying tasks for the implementation of the SWPP&MP elements set forth herein by identifying responsible parties through an inter-jurisdictional agreement (IJA). Within **twelve (12) months** from the date of written NOI authorization to discharge from the Department, all co-permittees shall coordinate with each other to develop an inter-jurisdictional agreement that defines relative responsibilities for each of the activities required herein, with a final signed agreement submitted to the Department (included within the finalized SWPP&MP) within **twenty-four months (24) months** from the date of written NOI authorization to discharge from the Department. The inter-jurisdictional agreement shall address, at a minimum, the following elements:
 - i. roles and responsibilities for each permittee, by SWPP&MP element;
 - ii. monitoring responsibilities;
 - iii. reporting responsibilities;
 - iv. financial arrangements among permittees (if any); and
 - v. method and regularity of communication/coordination among permittees.

Co-permittees remain jointly and severally responsible for fully complying with all requirements of the permit and terms as outlined within the SWPP&MP. Upon execution, the inter-jurisdictional agreement described herein shall be submitted to the Department and incorporated as an Appendix into the SWPP&MP described in Part II herein. Co-permittees shall comply with all requirements of the inter-jurisdictional agreement.

- e) Participating in an annual meeting of all co-permittees to coordinate the implementation of the SWPP&MP. Permittees shall prepare an accurate reflection of the topics discussed and any action plans in at least one complete set of meeting notes taken at each annual meeting and include such notes in each annual report to the Department required by Section IV.F herein.

D. Discharge Limitations

- 1) The permittee must develop, manage, implement and enforce a Storm Water

Pollution Prevention and Management Program (SWPP&MP) in accordance with the Clean Water Act and its implementing NPDES regulations, 40 C.F.R. Part 122, to meet the following requirements:

- a) exclusion of pollutants in storm water discharges or other unauthorized discharges into and from the MS4;
 - b) attainment of applicable Load Allocations (LAs) for each established or approved Total Maximum Daily Load (TMDL) for each receiving water body, consistent with the requirements of 33 U.S.C. § 1342(p)(3)(B)(iii); 40 C.F.R. § 122.44(k)(2) and (3); and
 - c) compliance with all provisions and requirements contained in this permit, and with plans and schedules developed in fulfillment of this permit.
- 2) Compliance with the provisions contained in Parts II through IV of this permit, including any measurable goals as contained within the SWPP&MP, shall constitute adequate progress toward compliance with Delaware SWQS and LAs for this permit term.

E. Obtaining Permit Coverage

- 1) Regulated small MS4s seeking coverage under this permit must submit a Notice of Intent (NOI) to the Department (using form available at <http://www.dnrec.delaware.gov/wr/information/swdinfo/pages/ms4.aspx> or by contacting the Department at 302-739-9946 to obtain the form). The NOI shall be completed with the following information:
 - a) Name, mailing address and phone number of person responsible for overall coordination of the storm water management program;
 - b) Name of entity to receive permit coverage;
 - c) Identification of the MS4 as federal, state, county, municipality or other public entity. If the entity to receive permit coverage is a city or town, indicate whether there are other MS4s, including non-traditional MS4s, within its boundaries, such as state highways, universities, military bases, or prisons;
 - d) Identification of the names of all waters that receive a discharge from the MS4, including the following information for each such receiving water: [Maps are available from the USGS-U.S. Department of Interior website (<http://store.usgs.gov/>)]
 - i) Indicate the number of outfalls discharging to each waterbody.

- ii) Indicate the designated uses of each waterbody (as designated in the State of Delaware Surface Water Quality Standards) as amended
(<http://www.dnrec.delaware.gov/swc/wa/Pages/Watershed%20Assessment%20Surface%20Water%20Quality%20Management.aspx>).
- iii) Indicate whether the receiving water body is listed in the latest State of Delaware Combined Watershed Assessment Report (305(b)) and Determination for the Clean Water Act Section 303(d) List of Waters Needing TMDLs
([http://www.dnrec.delaware.gov/swc/wa/Documents/WAS/dave's%20docs/2014%20Delaware%20Integrated%20305\(b\)-303\(d\)%20Final.pdf](http://www.dnrec.delaware.gov/swc/wa/Documents/WAS/dave's%20docs/2014%20Delaware%20Integrated%20305(b)-303(d)%20Final.pdf)).
If the water body is included on the Combined Watershed Assessment Report, provide the following details:
 - (1) TMDL status or Pollutant Attainment Classification;
 - (2) pollutant(s) or stressor(s) causing impairment; and
 - (3) probable source of pollutant(s) or stressor(s) (according to the 303(d) list).
- e) A statement describing what, if any, local public notice requirements apply to the applicant's storm water program, including the SWPP&MP finalization. If applicable.
 - i) The statement shall include a citation to the public notice rules.
 - ii) The statement shall describe the process for notice and comment as described in the rule.
 - iii) The statement shall set out a generic timeline for complying with the rule, which outlines that total amount of time required to notice, allow for comment, respond to comments, revise and finalize the SWPP&MP under the applicable rule so that the notice and comment part of the SWPP&MP will be accounted for and completed in compliance with the deadline of this permit.
- f) Attest to the following statement with original signature of a person who is authorized to represent and legally bind the entity.

"I certify under penalty of law this document and all attachments were prepared under my direction, or supervision, in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or person(s) directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."

2) Submission of Notice of Intent (NOI)

- a) The permittee shall submit a Notice of Intent (NOI) to the Department pursuant to 40 C.F.R. § 122.32(a)(1) within **sixty (60) days** of the effective date of this permit, unless granted a longer period of time by the Department or EPA.
- b) For permit renewal, permittees shall submit the NOI to the Department in accordance with Part V.H herein.

Notices of Intent shall be submitted to the Department at

State of Delaware
Department of Natural Resources & Environmental Control
Division of Water/Surface Water Discharges Section/MS4 Program
89 Kings Highway
Dover, DE 19901

- 3) Submission of Notice of Intent Electronically (eNOI)
 - a) The Department may require future NOI submittals to be executed electronically in accordance with 40 CFR Part 127. Upon written notification from the Department all permittees and co-permittees must transition to eNOI submission in lieu of hardcopy submittals. The eNOI must be electronically signed.

F. Permit Term

This permit shall remain effective for a period not to exceed five (5) years. The terms and conditions of an expired permit may be automatically continued pending issuance of a new or reissued permit pursuant to Section V.M herein.

Part II. Storm Water Pollution Prevention and Management Program (SWPP&MP) and Monitoring

A. Schedule for SWPP&MP

Within **thirty-six (36) months** from the date of written NOI authorization to discharge from the Department, the permittees shall fully implement the Department-authorized Final SWPP&MP including the TMDL Plan as specified herein, which is designed to control the quality of the storm water discharged from the MS4 referenced herein. The permittees shall develop the SWPP&MP according to the following enforceable submission deadlines:

1. Draft SWPP&MP shall be submitted to the Department for review within **twelve (12) months** from the date of written NOI authorization to discharge from the Department.
2. Final SWPP&MP shall be submitted to the Department for review within **twenty-four (24) months** from the date of written NOI authorization to discharge from the Department.

The permittee shall complete a public notice process pursuant to 40 C.F.R. § 122.28(d)(2) for the Draft SWPP&MP and Draft IJA prior to submission of the Final SWPP&MP and Final IJA in accordance with the its own administrative procedures or as required by the Department if the permittee does not have its own administrative procedures. The permittee must ensure that all public comments collected from the public commenting process have been addressed prior to submission of the Final SWPP&MP to the Department for final authorization.

B. General Requirements for SWPP&MP

The permittee shall develop and implement a SWPP&MP that addresses all requirements set forth in this Section and that it is consistent with Section 402(p)(3)(B) of the Clean Water Act, and the federal NPDES storm water regulations at 40 C.F.R. Part 122.34.

- 1) The permittee shall design the SWPP&MP to reduce loadings of pollutants that are the cause of impairment to the waters receiving storm water from the MS4. The SWPP&MP, shall achieve the exclusion of non-storm water discharges and compliance with Water Quality Standards as required by Section 301(b)(1)(C) of the Act through the implementation of "Maximum Extent Practicable" standards required by Section 402(p)(3)(B) of the Act.
- 2) The SWPP&MP shall contain measurable goals and a schedule of implementation for all minimum control measures.
- 3) The SWPP&MP include a TMDL Plan that satisfies the requirements of Part II D

of this permit.

- 4) The permittee shall describe in the SWPP&MP all best management practices (see National Menu of Best Management Practices for Stormwater at <https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater#edu>), control measures, and other actions to be implemented as part of this permit.
- 5) The SWPP&MP shall contain contact information for at least one person who is responsible for implementing and/or coordinating the storm water management program for each permittee.
- 6) Implementation of the SWPP&MP may be achieved through participation with the other permittees, public agencies, or private entities in cooperative efforts to satisfy the requirements of Part II herein, in lieu of creating duplicate program elements for each individual permittee. However, the failure of any one permittee to fulfill its obligations under the SWPP&MP shall not relieve any other permittee of liability for ensuring that the SWPP&MP is fully developed and implemented.
- 7) The SWPP&MP shall cover the term of this permit and shall be updated on a continuous basis to maintain accuracy, or as otherwise required by the Department.
- 8) Any modifications to the SWPP&MP shall be made in accordance with this permit.
- 9) Existing permittees that are operating under an authorized SWPP&MP prior to receiving coverage under this permit shall continue to implement their existing SWPP&MP until a new SWPP&MP is implemented in accordance Part II.A.

C. Specific SWPP&MP Requirements

The SWPP&MP shall be implemented in a manner consistent with the following requirements and address the pollutants that are the cause of the water quality impairment in the CWA 303 (d) listing for all waters that receive discharge from the MS4 (including any waterways that are listed as impaired but do not yet have a TMDL). Additionally, the permittee shall ensure that all staff responsible for one or more program elements receives annual training that relates to the type of work performed by the employee, to be quantified as a measureable standard within the SWPP&MP. Examples include, but are not limited to: storm water design and plan review; inspection and maintenance of the MS4 system or BMPs; the proper location, design, maintenance of green technology practices; or spill prevention/clean-up.

1. Public Education/Public Involvement

The permittees shall, utilizing available media of their choosing, identify an appropriate targeted audience, and develop and implement an education and outreach program that is designed to: (1) increase the knowledge of the target audience regarding MS4s, impacts

of urban runoff on receiving waters, and potential BMP solutions to reduce pollutant releases to MS4s and the environment; (2) improve the behavior of the target audience to reduce pollutant releases to MS4s and the environment, and (3) reduce the discharge of pollutants to the MS4 by educating the target audience about issues associated with storm water runoff.

The Public Education and Outreach Program shall cover:

- (i) clear goals and objectives;
 - (ii) identified target audiences;
 - (iii) message(s) specific to the target audiences;
 - (iv) packaging and distribution of the message(s);
 - (v) evaluation of the outreach plan;
 - (vi) co-permittee responsibilities (where applicable);
 - (vii) the education and outreach program shall, at a minimum, develop, promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials, including floatables, into the MS4, via a publicly-listed, water quality citizen complaints/reports telephone number;
 - (viii) illegal dumping into storm drains from commercial and residential activities;
 - (ix) the proper management and disposal of grass clippings, leaf litter and domestic animal wastes;
 - (x) the proper use, application, and disposal of pesticides, herbicides, and fertilizers by commercial and private applicators and distributors;
 - (xi) public participation events, such as stream clean-ups, drain stenciling, etc.; and
 - (xii) opportunities for residential installation of low impact development practices, and the use of green technology BMPs that reduce runoff and mimic natural hydrology.
- (a) The Education and Outreach Program **shall include at least two public educational events focusing on storm water runoff each year and shall document that a minimum of one impression each year for every two people (population within the permittees jurisdictional boundaries)** is made on the general public about storm water quality via direct contact, print, local TV access, local radio, internet, or other appropriate media.
- (b) A statistically-valid public education survey to evaluate the effectiveness of the education and outreach program in increasing public awareness and changing behaviors about storm water pollution. A “baseline” survey (**Public Education Survey #1**) shall be conducted beginning no later than **twenty-eight (28) months** of the date of written NOI authorization to discharge from the Department with

the results submitted to the Department within **one hundred-eighty (180) days** after the survey is issued. A second survey (**Public Education Survey #2**) shall be conducted beginning no later than **forty-two (42) months** from the date of written NOI authorization to discharge from the Department. Survey results shall be submitted to the Department no later than **one hundred-eighty (180) days** after the survey is issued. The two surveys shall apply the same assumptions or modeling techniques to ensure survey results are comparable. If upon comparison of the two surveys, no measurable difference in public awareness is evident, the permittees shall re-evaluate their public education and outreach program and determine more effective methods of providing this program. A plan for the improved program shall be submitted to the Department no later than **ninety 90 days** from the date that the survey results are submitted. A sample survey as an option for permittees to implement can be found at by contacting the Surface Water Discharge Section at the location noted in Part I.E.2.

- (c) The SWPP&MP shall include a plan for public participation in addressing the minimum control measures (MCMs) required as a part this permit. The permittee shall make efforts to reach out and engage all economic and ethnic groups during the public participation process (40 C.F.R. 122.34(b)(2)(i-ii). Additionally, the SWPP&MP shall contain procedures for receipt and consideration of information submitted by the public (40 C.F.R. 122.34(b)(4)(ii)(E)).

2. Illicit Discharge Detection and Elimination

a) Prohibitions

- (i) Within **twenty-four (24) months** from the date of written NOI authorization to discharge from the Department, permittees without an existing ordinance must develop county or municipal statutes or ordinances, or similar mechanisms, to prohibit the discharge of materials other than storm water (refer to Part II.C.2.a.iv) to the MS4. Permittee shall require the elimination of illicit discharges and improper disposal practices and abatement and clean up. The permittee shall prohibit the discharge or disposal of used motor vehicle fluids, household hazardous wastes, grass clippings, leaf litter, domestic animal wastes and sanitary sewer overflows (SSOs) into the MS4. The permittee shall promote - through education, public information and other measures - the proper management and disposal of used motor vehicle fluids (at a minimum, oil and antifreeze) and household hazardous waste materials (including paint, solvents, pesticides, herbicides, and other hazardous materials). The permittees shall coordinate such efforts with the Delaware Solid Waste Authority and the Department's Division of

Waste and Hazardous Substances. The permittee shall explore opportunities to facilitate existing recycling and household hazardous waste collection programs and identify ways to encourage more participation. Any existing IDDE ordinances must meet the requirements of this permit. Any changes related to revisions of an ordinance must be completed within **twenty-four (24) months** from the date of written NOI authorization to discharge from the Department.

(ii) The permittee shall create and maintain a standard operating procedure and shall train all workers on methods to contain and safely remove wastes (including disinfection) originating from sanitary sewer overflows (SSOs) to avoid discharge to any portion of the MS4. The permittee may refer to The Collection System Collaborative Benchmarking Group's Guidance Document, "Best Practices for Sanitary Sewer Overflow Prevention and Response Plan". The permittee shall report any SSO that enters the MS4 or any SSO over fifty (50) gallons that has the potential to impact the MS4 to the Department's 24-hour Spills and Releases Hotline at 1-800-662-8802 as soon as possible, but no later than eight (8) hours following such a discharge. If the discharge is in excess of the Reportable Quantities (7 Del. C. §1203), the permittee shall report the incident to the Department via the 24-hour Spills and Releases Hotline immediately upon discovery and after activating any necessary response team. For any SSO that enters the MS4 or is over fifty (50) gallons that has the potential to impact the MS4, a written report shall be provided to the Department's Surface Water Discharges Section at the address noted in Part I.E.2.(c) within five (5) days of the release. This notification shall contain the following information:

- a. a description of the discharge, including an estimate of the amounts discharged, and the cause of non-compliance;
- b. the period of noncompliance, including the dates and times and if the noncompliance has not been corrected, the anticipated time when the discharge will be eliminated and the system will return to compliance; and
- c. actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

(iii) Unless identified as a significant source of pollutants to waters of the State, the following non-storm water discharges are examples of substances that are allowed to enter the MS4. Other activities may apply if substantiated by permittees within the SWPP&MP

and approved by the Department (40 C.F.R. § 122.34(b)(3)(ii):

- a. water line flushing;
- b. diverted stream flows;
- c. rising groundwaters;
- d. uncontaminated groundwater infiltration to separate storm sewers;
- e. uncontaminated pumped groundwater;
- f. discharges from potable water sources;
- g. foundation drains;
- h. air conditioning condensate;
- i. irrigation water;
- j. springs;
- k. water from crawl space pumps;
- l. footing drains;
- m. individual residential vehicle washing;
- n. flows from riparian habitats and wetlands;
- o. dechlorinated swimming pool discharges; and
- p. discharges or flows from emergency firefighting activities.

(b) Illicit Discharge Detection Program

- (i) The SWPP&MP shall include a program to detect illicit discharges and improper disposal into the MS4 and to require appropriate corrective action. Appropriate corrective action may be either the elimination of the illicit discharge(s) or the issuance of an NPDES permit for the continuance of the discharge. The permittee shall include in its/their program a system to prioritize and investigate complaints/reports or monitoring information that indicates potential illicit discharges, including a spill or illegal dumping. Permittees shall immediately respond to problems/violations judged by the permittee to be urgent, severe, or an emergency, including, but not limited to, discharges that may pose a hazard to human health or discharges that pose a substantial endangerment to aquatic life. Within **thirty-six (36) months** from the date of written authorization to discharge from the Department, each permittee shall provide a publicly-listed, water quality citizen complaints/reports telephone number (permittee with an existing complaint number may continue to use their respective hotlines). A summary of the IDDE reports and subsequent response actions shall be included in the annual reports.

(ii) Mapping

- a. Within **thirty-six (36) months** from the date of written authorization to discharge from the Department, the permittees shall submit a GIS layer, or other Department-approved mapping method, for all urbanized/impervious areas within the coverage area of this permit, which shall be accomplished by confirming currently available land use/land cover data and impervious surface data (urban storm water, impervious surfaces, and industrial storm water). The impervious areas within the MS4 boundaries shall be identified as directly connected (effective impervious) to the MS4 or not directly connected to the MS4. For existing permittees, the map(s) of the sewer data, structural BMPs and other green technology BMPs within the regulated small MS4 area shall be updated and maintained continually during each year of coverage under the general permit. The permittee are not required to include smaller, residential-type dispersed BMPs, such as rain barrels and rain gardens. Mapping may include all existing and readily available information including project plans, records, drainage maps and field surveys, and must be based on methods that sufficiently identify structures in terms of data accuracy.
- b. Submit all data layers and/or mapping with the annual report (Part IV.F) and upon request by the Department or EPA.

(iii) As part of the SWPP&MP, the permittee shall develop a screening and evaluation program for illicit discharges. The permittee shall develop and implement a written dry weather field screening program to assist in detecting and eliminating illicit discharges to the small MS4. Dry weather field screening must consist of (1) field screening; and (2) as needed, field evaluations.

- a. **Within Field screening requirements: the permittee shall conduct dry weather field screening for 20% of the entire storm sewer system each year or 100% of the system every five years.**
- b. Field evaluation requirements: the permittee shall

develop written procedures to determine which dry weather flows will be screened, based on results of field observations or complaint from the public or the permittee's trained field staff. At a minimum, when visual observations indicate a potential problem such as discolored flows, foam, surface sheen, and other similar indicators of contamination, the permittee shall sample and analyze for selected indicator pollutants as determined by the permittee. Any field evaluations shall be included in the annual reports.

(c) Illicit Discharge Elimination Program

The SWPP&MP shall include a plan to eliminate illicit discharges. The illicit discharge elimination program shall include the following elements.

- (i) As part of the SWPP&MP, the permittee shall implement a program to reduce the discharge of floatables (e.g., litter and other human-generated solid refuse) toward achieving compliance with water quality standards. The floatables control program shall include source controls and, where necessary, structural controls.
- (ii) If at any time the permittee, the Department, or EPA becomes aware of any illicit discharge, the permittee must take appropriate actions to address this condition within 30 days, documenting measures that were used to correct the condition. Such permit requirements do not preclude any enforcement action that may be taken by either the Department or EPA at any time.

(d) Industrial Storm Water Program

The permittee shall assist the Department with maintaining the inventory of industrial facilities within the boundaries of the permitted MS4. This inventory shall include those facilities subject to 7 Del. C. §7201-9.1, State of Delaware *Regulations Governing Storm Water Discharges Associated with Industrial Activity* (Industrial Storm Water Regulations). The method of assistance will begin with the Department providing the permittee with a list of the current permitted facilities within its jurisdiction and with the list of all SIC codes that are covered under the Industrial Storm Water Regulations. The permittee shall then add to this list if it identifies any new facilities.

This inventory shall contain the following:

- a) facility name and address;
- b) mailing address;
- c) operator name and contact information;
- d) SIC code or activity description; and
- e) GPS coordinates/GIS point data layer file, if available.

If, through their routine operations, the permittee identifies any new industrial facilities, then the permittee shall notify the Department within 30 days.

The permittee shall provide the Department with the inventory of facilities and any observations of those facilities in the annual report package (Part IV.F).

3. Storm Water Management during Construction

- a) The permittee shall include in the SWPP&MP a program to reduce the discharge of pollutants from active construction sites that are captured under Delaware's Sediment and Storm Water Regulations and NPDES Construction General Permit requirements to address both sediment and pollutants other than sediment discharged during construction, such as those noted in (iv) below. This section may be implemented by another entity via a memorandum of understanding if that entity is designated as the Designated Authority for Delaware's Sediment and Storm Water Regulations (7 Del. C. Ch. 40) and Special Conditions for Storm Water Discharges Associated with Construction Activities (7 Del. C. Ch. 60) and if so, the permittee should indicate this in the SWPP&MP. The permittee, or the Designated Authority shall implement and enforce programmatic measures to reduce the discharge of pollutants from construction sites, including:
 - i) requirements for the review and approval of Sediment and Stormwater Plans to ensure compliance with standards in the Delaware Sediment and Storm Water Regulations (7 Del. C. Ch. 40) and Special Conditions for Storm Water Discharges Associated with Construction Activities (7 Del. C. Ch. 60);
 - ii) requirements for the use and maintenance of appropriate structural and nonstructural sediment and erosion controls and other BMPs to reduce polluted discharges to the MS4 during the time when construction is underway;
 - iii) requirements and procedures for the inspection of construction sites and enforcement of control measures, and the notification of operators if NPDES Construction General Permit requirements are not being met (i.e., weekly inspections), and enforcement if necessary;

- iv) requirements for construction site operators to control wastes such as discarded construction or building materials, concrete truck washout, chemicals, litter, oil, and sanitation waste;
 - v) requirements to ensure adequate training of site contractor in accordance with the current Delaware Sediment and Storm Water Regulations (7 Del. C. Ch. 40) and Special Conditions for Storm Water Discharges Associated with Construction Activities (7 Del. C. Ch. 60);
 - vi) inspection requirements to ensure that BMPs are properly constructed and installed;
 - vii) development and adoption of a local regulatory mechanism for enforcing onsite compliance with numbers (i) through (v) above within **forty-eight (48) months** from the date of written authorization to discharge from the Department; and
 - viii) if any or all of the Construction Site Storm Water Management Program will be overseen by another entity, including a Delegated Authority, the permittee shall enter into a Memorandum of Understanding (MOU) or Inter-Jurisdictional Agreement (IJA) with said entity that will ensure full coverage of permittee's responsibilities. If established, the MOU or IJA must be provided to the Department no later than **twelve (12) months** from the date of written NOI authorization to discharge from the Department or in the event that the permittee administers its own construction program but later enters into a MOU or IJA with a delegated agency, it shall provide a copy of the agreement to the Department no later than **two (2) months** after the execution of the agreement.
- b) Any amendments to the applicable State or Federal regulations that may become effective during the term of this permit shall apply.
- c) Should the Department Delegated Authority fail to continue to implement its existing programs in compliance with the governing statute, then the permittee will continue to be responsible for the above conditions.

4. Post-Construction Storm Water Management

- a) The SWPP&MP shall include a program to reduce the discharge of pollutants and reduce the quantity of water leaving post-development construction sites for new development, as prescribed under the Delaware Sediment and Storm Water Regulations.
- b) Permittees shall implement and enforce a program to address post-construction storm water runoff (quantity and quality) from new development and redevelopment projects. The program must include:

- i) procedures to require adequate long-term operation and maintenance of any BMPs employed;
 - ii) requirements to inspect privately-owned storm water management BMPs installed after 1991, for private and commercial developments, not to include resident-owned micro-scale BMPs such as rain barrels and small resident-owned rain gardens. Inspections shall occur on an annual basis, except in instances after BMP repair, in which case BMPs shall be inspected within one year after repair. BMPs shall be inspected based on any standards and specifications provided by Delaware's Sediment and Storm Water Program;
 - iii) requirements to update BMP inventories annually (see Mapping requirements in Part II A (2)(b)(ii)); and
 - iv) if any or all of the Post-Construction Storm Water Management Program will be overseen by another entity, including a Sediment and Storm Water Delegated Agency, the permittee shall enter into a MOU or IJA with said agency that will ensure full coverage of permittees responsibilities. If established, the MOU or IJA must be provided to the Department no later than **twelve (12) months** from the date of written NOI authorization to discharge from the Department or in the event that the permittee administers its own construction program but later enters into a MOU or IJA with a delegated agency, it shall provide a copy of the agreement to the Department no later than **two (2) months** after the execution of the agreement.
- c) Any amendments to the applicable State or Federal regulations that may become effective during the term of this permit shall apply.
- d) Should the Department's various Sediment and Storm Water Program Delegated Agencies fail to continue to implement their existing programs in compliance with the governing statute, then all permittees will continue to be responsible for the above conditions.

5. Good Housekeeping

The permittee shall, through the SWPP&MP, develop and implement a good housekeeping program that is designed to prevent and/or minimize discharges of pollutants associated with the permittee's operations. The good housekeeping program shall include:

- a) a training program for employees consistent with 40 C.F.R. 122.34(b)(6);
- b) a plan to include the current inventory of all facilities owned or operated by the permittee located in the MS4 permit area that either maintain coverage under the NPDES Industrial Storm Water General Permit Program or that have the potential to contribute polluted discharges as a result of storm water. Section 9.1 of the

Regulations Governing the Control of Water Pollution shall determine what facilities require an Industrial Storm Water General Permit. These facilities include, but are not limited to, maintenance yards, municipally-owned parking lots, or municipally-owned parks. **This list is to be updated and submitted in the annual report package. The permittee shall inspect all facilities on the list on an annual basis according to Department guidelines. The permittee shall submit details of these inspections to the Department in the annual report package.**

- c) **A street cleaning program.** The SWPP&MP shall contain the specification of a street cleaning program that will provide coverage for the entire MS4 area. An IJA or a MOU shall be developed if any entity other than the permittee is responsible for roads located within the permittee's jurisdiction. If established, the MOU or IJA must be provided to the Department no later than **twelve (12) months** from the date of written NOI authorization to discharge from the Department.
- i) All streets, roads, rights of way and permittee-owned parking lots within the boundaries of the regulated MS4 shall have an associated street cleaning program described in the SWPP&MP. The permittee shall maintain these areas in such a manner as to minimize the discharge of pollutants to and from the MS4. **The permittee shall, at a minimum, sweep/clean twice per year, once in the spring (following winter activities) and once in the fall (leaf clean up) all paved roadways with directly connected impervious area (DCIA) discharging storm water runoff to the permittee's MS4.**
- ii) The SWPP&MP must report a numeric measurable street cleaning regime. The permittee must demonstrate the adequacy of the street cleaning regime for pollutant removal and improved water quality. The SWPP&MP shall also describe procedures for the proper disposal of street sweeping debris and waste. The permittee shall summarize all street cleaning activities in the annual report and include information about the location and frequency of area swept.
- d) **A catch basin cleaning program.** The SWPP&MP shall contain the specification of a catch basin cleaning program that will provide coverage for the entire MS4 area. An Inter-Jurisdictional Agreement (IJA) or a Memorandum of Understanding shall be developed if any other entity other than the permittee is responsible for the underground maintenance of storm water infrastructure, including catch basins, that passes through permittee's jurisdiction. If established, the MOU or IJA must be provided to the Department no later than **twelve (12) months** from the date of NOI authorization to discharge from the Department. The SWPP&MP must include specific provisions for all phases of repair and maintenance of catch basins. The permittee shall optimize routine cleaning and

maintenance of catch basins such that the following conditions are met.

- i) **The permittee shall ensure that no catch basin sump shall be more than 50 percent full. A catch basin sump is more than 50 percent full if the contents within the sump exceed one half of the distance between the bottom interior of the catch basin to the invert of the deepest outlet of the catch basin.**
 - ii) The permittee shall document in the SWPP&MP and in the annual reports its plan for optimizing catch basin cleaning. Documentation shall include metrics and other information used to reach the determination that the established plan for cleaning and maintenance is optimal for the MS4; and
 - iii) The permittee shall report in each annual report the number of catch basins inspected, number cleaned, and the volume or mass of material removed from each catch basin to impaired waters and the total volume or mass of material removed from all catch basins.
- e) A program to reduce the contribution of pollutants associated with the application, storage and disposal of pesticides, herbicides, and fertilizers from permittee's areas and activities to the MS4. The program shall include, but not be limited to:
- i) educational programs for permittee's employees who work directly with pesticides, herbicides, and fertilizers;
 - ii) a Nutrient Management Plan for all urbanized areas receiving nutrient applications according to requirements set forth by the Delaware Nutrient Management Law (Del. C. Title 3, Chapter 22 §2201-§2290);
 - iii) application by certified applicators and annual summary report of applications to be included in annual report;
 - iv) integrated pest management measures that incorporate non-chemical solutions;
 - v) the use of native vegetation; and
 - vi) the collection and proper disposal of unused pesticides, herbicides, and fertilizers.
- f) A program to manage snow and ice, including salt storage practices and alternative deicing practices.
- g) A program to control litter on streets and highways, including the proper disposal of collected material.

D. Monitoring Requirements as Part of the SWPP&MP

1. Total Maximum Daily Loads (TMDLs), Load Allocations (LAs), and Applicable Water Quality Standards

A number of TMDLs have been approved or established by the EPA for waters located in the State of Delaware to which the permittee's MS4 may discharge. These TMDLs may assign specific numeric Load Allocations (LAs) to watersheds located within the MS4 permit area. The LAs represent non-point pollutant sources, including urban storm water, industrial storm water, agriculture, and septic systems.

This permit does not set numeric effluent limits. While permittees will not be required to meet a numeric allocation within this permit term, the permittee shall implement the BMPs that are designed to prevent, reduce, or remove the pollutants identified in the TMDL LAs for storm water associated with the MS4.

The Department has developed Pollution Control Strategies for several watersheds that identify potential BMPs to address TMDL LAs. Permittees may incorporate any of the specific plans, strategies, or BMPs associated with an existing Pollution Control Strategy. Available Pollution Control Strategies can be found at:

<http://www.dnrec.delaware.gov/swc/wa/pages/watershedmanagementplans.aspx>

Within **twenty-four (24) months** from the date of written NOI authorization to discharge from the Department, for each watershed with an approved TMDL and LA, the permittee shall submit a TMDL Plan as part of that addresses the requirements of the TMDL, including the following elements.

1. TMDL name and pollutants of concern.
2. A detailed description of all targeted controls to be implemented, such as identifying areas of focused effort or implementing additional Best Management Practices (BMPs) to reduce the pollutant(s) of concern in the impaired waters.
3. A measurable goal and an implementation schedule describing BMPs to be implemented during each year of the permit term for each targeted control.
4. The annual report shall include an update for the schedule and implementation of BMPs. The permittee shall keep all records associated with the TMDL Plan within the SWPP&MP.

For any bacteria TMDLs within the area covered by this permit, permittees shall implement practicable, cost effective BMPs that have been identified as being effective at addressing the pollutant of concern.

Within **twenty-four (24) months** from the date of written NOI authorization to discharge from the Department, the permittees shall submit a GIS layer, or other Department-approved mapping method, for all urbanized/impervious areas within the coverage area of this permit, which shall be accomplished by confirming currently available land use/land cover data and impervious surface data (urban storm water, impervious surfaces, and industrial storm water). The impervious areas within the MS4 boundaries shall be identified as directly connected (effective impervious) to the MS4 or not directly connected to the MS4. This information shall be submitted to the Department with the permittee's annual report and updated to reflect the current conditions during the year preceding each annual report thereafter.

For TMDLs throughout the state, where LAs are assigned specific to urban storm water, the permittees shall be responsible for addressing reductions required by the TMDL as categorized as urban storm water and shall establish reductions over iterative stages of a long-term program, which shall be outlined within the SWPP&MP. Approved TMDL reports for each waterbody are available at <http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx>.

For the Chesapeake Bay TMDL, as established on December 29, 2010, the permittee within the Chesapeake drainage area will be responsible for addressing reductions as categorized as urban storm water and shall establish reductions over iterative stages of long-term program consistent with Delaware's Chesapeake Bay Watershed Implementation Plan (WIP), the Chesapeake Bay TMDL, and applicable Pollution Control Strategies (PCS).

For calculating TMDL load reductions for all TMDLs other than the Chesapeake Bay TMDL, all BMPs implemented after the baseline year for establishment of the TMDL and LAs can be counted toward these reductions. Annual loads, rather than daily loads, are to be used for all calculation and reporting purposes (<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx>). For calculating TMDL load reductions for the Chesapeake Bay TMDL, all BMPs implemented after 2005 can be counted toward those reductions.

2. TMDL Performance Monitoring Plan

- a) As part of the TMDL Plan and consistent with 40 C.F.R. 122.44(i), the permittee shall develop and implement a plan for monitoring and analyzing the expected

pollutant load reductions using existing data on BMP performance, establishing regular monitoring stations, and calculating load reductions on future development. The Performance Monitoring Plan shall be designed to demonstrate any progress toward achieving applicable Water Quality Standards.

- b) The permittee shall develop and implement a method to assess TMDL Plans for their effectiveness in reducing the pollutants identified in the LAs. The evaluation shall use water quality monitoring results or modeling tools to estimate pollutant reductions and determine the effectiveness of their TMDL Plan. Monitoring may include BMP, outfall, or in-stream monitoring, as appropriate, to estimate pollutant reductions. The operator may conduct monitoring, utilize existing data, establish partnerships, or collaborate with other MS4 operators or other third parties, as appropriate. The methodology used for assessment shall be described in the TMDL Plan.
- c) Analytical methods for any monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the Department. Where an approved method does not exist, the operator must use a method consistent with the TMDL.
- d) The permittee shall submit their Performance Monitoring Plan to the Department for approval as part of the TMDL Plan. Performance Monitoring Plan modifications (not to include changes in monitoring station locations) shall not be changed without notification to and approval from the Department.
- e) If additional or modified BMPs are determined to be necessary, the permittee shall modify the SWPP&MP using the process described in Part II.E below to include additional BMPs and modifications, the expected additional pollutant load reductions associated with the BMPs and modifications, and the associated schedule for implementing the BMPs and modifications. Public notice of the additions/modifications shall also be required.

3. Dry Weather Screening Plan

Permittees shall develop a Dry Weather Screening Plan per the requirements described in Part II.C.2.b(iii).

4. In-Stream Monitoring

The permittee may use State 305(b) reports as a substitute for in-stream monitoring if adequate to meet the goals of the SWPP&MP; or the permittee may choose to provide in-stream monitoring data to support goals of TMDLs within the MS4 area.

E. Modification to the SWPP&MP

Once the initial SWPP&MP has been authorized by the Department, the SWPP&MP shall not be modified without the Department's approval unless as indicated below:

- 1) Changes adding (but not subtracting or replacing) components, controls, or requirements to the SWPP&MP may be made at any time.
- 2) Changes replacing an ineffective or infeasible BMP specifically identified in the SWPP&MP with an alternate must be approved by the Department in advance and may be requested at any time. Such requests shall include the following elements.
 - a) An analysis of why the BMP is ineffective or infeasible, or a description of why the newly proposed BMP would be more applicable (public participation, partnership opportunity, grant funding opportunity).
 - b) Expectations on the effectiveness of the replacement BMP.
 - c) An analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.
- 3) Any written requests to modify the SWPP&MP or changes made to the SWPP&MP shall include a certification signed by the permittee responsible for SWPP&MP implementation, that all co-permittees (if applicable) were given an opportunity to comment on the proposed change(s) prior to its (their) submittal.
- 4) Changes or updates required by the Department: Upon notification from the Department that the SWPP&MP does not adequately address the requirements herein, the permittee shall modify the SWPP&MP and submit the proposed changes to the Department within the timeframe specified by the Department. If changes compromise any terms of the IJA, a modified IJA must be also executed concurrent with the SWPP&MP modification.

Part III. Evaluation of the SWPP&MP

Within **forty-eight (48) months** from the date of written NOI authorization to discharge from the Department, the permittee shall conduct a comprehensive effectiveness analysis of the SWPP&MP, with analysis measures to be described in a SWPP&MP monitoring plan that shall be included with the SWPP&MP. This analysis shall quantify the associated expected load reductions to estimate the anticipated progress toward meeting all applicable LAs, and the progress toward meeting the program's goals and objectives as outlined within the SWPP&MP. The analysis shall further determine whether the implementation of the current and revised BMPs identified in the SWPP&MP are sufficient to make progress toward meeting LAs or if implementation of additional BMPs beyond those selected are necessary.

The permittees shall assess the effectiveness of the SWPP&MP based on:

1. Documentation of SWPP&MP activities;
2. Surveys of public awareness and changing behavior;
3. Estimates of change in loadings, that are:
 - a. added by development that occurs;
 - b. prevented or reduced by installation of BMPs associated with new development; or
 - c. prevented or reduced by installation of BMPs associated with existing conditions (i.e., retrofits); and
4. Available water quality sampling data, as sampled as part of the TMDL Plan within the SWPP&MP, if applicable.

Part IV. Reporting

A. Annual Report Requirements

The permittee shall prepare and submit an annual report as specified herein. If more than one entity is permitted via the same written NOI authorization to discharge under this permit one comprehensive annual report shall be submitted, with input from each co-permittee. The permittee shall submit the annual report to the Department Surface Water Discharge Section no later than **June 30th of each year** after issuance of written NOI authorization to discharge and shall cover all activities related to this permit during the preceding calendar year. The permittee shall include in the annual report a summary of the data documenting its/their compliance with this permit (Appendix A), in addition to one “MS4 Summary Report Form” (Appendix B) per permittee. Annual report data should report quantifiable data and information whenever possible, as outlined in the SWPP&MP.

All permittees are jointly responsible for timely submittal of the system-wide annual report, and each section addressed within the annual report (using the annual report template) shall identify individual tasks along with the jurisdiction responsible for performing them. The annual report shall indicate which, if any, permittees have failed to provide any required information (as identified in the IJA) on the portions of the MS4 for which they are responsible. Each permittee is responsible for the content of the report relating to those portions of the MS4 for which it is responsible, as determined in the IJA, and for failure to provide information for the system-wide annual report.

After issuance of this permit, the first annual report submission for existing MS4 permittees shall include reporting information from the existing SWPP&MP as described in the most recent annual report submitted to the Department until the final SWPP&MP is adopted. Once the new SWPP&MP is finalized, the annual report shall contain information relevant to the most recent SWPP&MP. The permittee shall ensure that the annual report comports with the reporting format contained in Appendix A hereto. The permittee shall ensure that all MOUs or IJAs entered into during the formation of the SWPP&MP are contained in the annual report following their finalization.

Part V. Standard Permit Conditions

A. Legal Authority

Each permittee shall maintain legal authority to implement the programs outlined in the SWPP&MP as originally demonstrated in the NOI.

B. Duty to Comply

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The violation of any effluent limitation or of any other condition specified in this permit shall be grounds for enforcement as provided in 7 Del. C. §6005; for loss of authorization to discharge pursuant to this permit; for permit revocation and reissuance or modification pursuant to this permit; or for denial of a permit renewal application. Pursuant to 7 Del. C. §6019, the Department may seek voluntary compliance by way of warning, notice or other educational means. However, the law does not require that such voluntary means be used before proceeding by way of compulsory enforcement.

C. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact on the environment resulting from noncompliance with this permit, including accelerated or additional monitoring as necessary to determine the nature and extent of noncompliance and to assess its impact.

D. Facilities Operation

The permittee shall at all times maintain in good working order and operate efficiently all structural controls, collection and treatment facilities and systems (and related appurtenances) installed or used by the permittees to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes, but is not limited to, effective performance (based upon design), adequate funding, effective management, adequate operator staffing and training and adequate laboratory and process controls, including appropriate quality control procedures.

E. Removed Substances

The permittee shall dispose of solids, sludges, filter backwash, or other similar substances that are removed in the course storm water infrastructure maintenance or in the course of collection or treatment of the discharges authorized herein in a

manner such as to prevent any pollutant from such materials from entering surface waters or groundwaters. All removed substances must be properly disposed of in accordance with applicable State and Federal regulations.

F. Availability of Reports

Except for data determined to be confidential under Section 308 of the Act and the Freedom of Information Act, all reports prepared in accordance with the terms and conditions of this permit shall be available for public inspection at the offices of the Department of Natural Resources and Environmental Control. As required by the Act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for under 7 Del. C. § 6013.

G. Flow Measurement

The permittee shall use flow measurement devices (where applicable) and methods that are consistent with accepted scientific practices to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The permittee shall install, calibrate and maintain the devices to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device.

H. Test Procedures

Analyses of pollutants shall conform to the applicable procedures identified in 40 C.F.R., Part 136, unless otherwise specified in this permit.

I. Penalties for Tampering

State law, 7 Del. C. §6013, provides that any person who falsifies or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall upon conviction, be punished by a fine of not less than \$500 nor more than \$10,000 or by imprisonment for not more than six (6) months, or by both.

J. Record Contents

For each measurement or sample taken pursuant to the requirements of this permit, the permittee taking such sample shall record the following information:

- i. the date, exact place, time and method of sampling or measurements;
- ii. the individual(s) who performed the sampling or measurements;
- iii. the date(s) analyses were performed;
- iv. the individual(s) who performed each analysis;
- v. the analytical techniques or methods used;
- vi. the results of such analyses; and
- vii. any quality assurance information.

K. Retention of Records

The permittee shall retain all records and information resulting from the monitoring activities required by this permit, all records of analyses performed, records of calibration and maintenance of instrumentation, all original strip chart recordings from continuous monitoring instrumentation and copies of all reports required by this permit for a period of five (5) years. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee. The permittee shall make records available to the Department within the timeframe specified by the Department at the time of request.

L. Transfer of Permit

In the event of any change in ownership or control of facilities covered by this permit, this permit may be transferred to another person if all of the following elements apply.

- 1) The current permittee notifies the Department, in writing, of the proposed transfer at least 30 days in advance of the proposed transfer date.
- 2) The notice includes a written agreement between the transferor and the transferee, indicating a specific date for transfer of permit responsibility, coverage, and liability.
- 3) Within thirty (30) days of receipt of the notification of the proposed transfer, the Department does not notify the current permittee and the new permittee of intent to modify, revoke and reissue, or terminate the permit and require that a new application be submitted.

- 4) Transfer of ownership or control of the facilities covered by this permit without meeting the criteria listed in Section G above may result in the Department assessing penalties to both the transferor and transferee in accordance with 7 Del. C. § 6013.

M. Reapplication for a Permit

At least one hundred-eighty (180) days before the expiration date of this permit, the permittee shall submit a new NOI application for permit coverage, unless permission for a later date has been granted by the Secretary. The Secretary shall not grant permission for applications to be submitted later than the expiration date of the expiring permit. Failure to submit an application for renewal 180 days before permit expiration may cause a lapse in permit coverage and also may result in enforcement action. In the event that a timely and sufficient reapplication has been submitted and the Department is unable, through no fault of the permittee, to issue a new permit before the expiration date of this permit, the terms and conditions of this permit are automatically continued through an administrative extension and remain fully effective and enforceable until the Department issues a new permit.

N. Permit Modification, Revocation and Reissuance, and Termination

- 1) After notice and opportunity for a hearing, the Department may modify, terminate or revoke this general permit and reissue it in whole or in part during its term, for cause, including, but not limited to, the following:
 - a) violation of any terms or conditions of this permit;
 - b) obtaining this permit by misrepresentation or failure to disclose all relevant facts;
 - c) a change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge(s); and/or
 - d) a determination by the Department that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.
- 2) In addition, after notice and opportunity for a hearing, the Department may modify, revoke or reissue this permit in whole or in part, for cause including, but not limited to, the following:
 - a) facility modifications, additions, and/or expansions that are not sanctioned either by this permit or by the programs administered by the permittees in accordance with this permit;

- b) material and substantial changes or additions to the permittees' operation or activities which justify the application of permit conditions that are different or absent from this permit;
 - c) information newly acquired by the Department, including, but not limited to, the results of the studies, planning, or monitoring described and/or required by this permit;
 - d) revision, withdrawal or modification of State surface water quality standards or effluent limitations guidelines promulgated by the Department or the EPA, but only when the permit term or condition requested to be modified or revoked was based on a State water quality standard or an effluent limitation guideline duly promulgated by the Department or the EPA that was revised, withdrawn or modified;
 - e) judicial remand of effluent limitation guidelines promulgated by the EPA, if the remand concerns that portion of the guidelines on which the permit term or condition was based and the request is filed within ninety (90) days of the judicial remand;
 - f) any modification or revocation and reissuance of permits specifically authorized by the Clean Water Act;
 - g) to comply with any applicable standard or limitation promulgated or approved under Sections 301, 304 and 307 of the Clean Water Act, if the effluent standard or limitation so issued or approved:
 - i. contains different conditions or is otherwise more stringent than any effluent limitations in the permit; or
 - ii. controls any pollutant not limited in the permit.
 - h) the permit as modified or reissued under this subparagraph shall also contain any other requirements of the Act then applicable;
 - i) to contain a schedule of compliance leading to termination of the direct discharge by a date which is no later than the statutory deadline;
 - j) to modify a schedule of compliance in an issued permit for good and valid cause by a date which is no later than the statutory deadline; or
 - k) to address new TMDL requirements, including relevant WLAs.
- 3) The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

O. Right of Entry

The permittee shall allow the Secretary, the EPA Regional Administrator, or their authorized representatives, jointly and severally, upon the presentation of credentials and such other documents as may be required by law:

- 1) to enter upon the premises of the permittee where a regulated facility or activity is located or conducted, or where any records are required to be kept under the terms and conditions of this permit; and
- 2) at reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit; to inspect any monitoring equipment or monitoring method required in this permit; to inspect any structural controls, collection, treatment, pollution management, or discharge facilities required under this permit; and to sample any discharge.

Failure to allow access or provide records in accordance with this provision constitutes a violation of the permit for which enforcement actions may be taken.

P. Duty to Provide Information

The permittee shall furnish the Department or the EPA, during normal business hours, any requested information to determine compliance with this permit. The permittee shall also furnish, upon request, copies of records required to be kept by this permit [40 CFR 122.41(h)]. The permittee shall submit records to the Department within 30 days or a timeframe specified by the Department upon time of request.

Q. Signatory Requirements

The permittee shall sign all applications, monitoring reports, SWPP&MP reports, certifications or other information required by this permit, whether submitted to the Department or maintained by the permittee, as follows:

- 1) by a principal executive officer or ranking elected official; or
- 2) a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a) the authorization is made in writing by the principal executive officer or ranking elected official and is submitted to the Department; and
 - b) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

For purposes of this paragraph, the principal executive officer of a federal, state, or public agency includes: (i) the chief executive officer of the agency (e.g., Cabinet Secretary); or (ii) a senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency (e.g., the Regional Administrator of EPA).

If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, the permittee must submit a new notice satisfying the requirements of this paragraph to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative no later than 30 days prior to the date of the next due deliverable.

R. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from administrative, civil or criminal penalties for noncompliance.

1) Penalties for Falsification of Reports

Section 309(c)(4) of the CWA provides that any person who knowingly makes a false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance, shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

2) Penalties for Violations of Permit Conditions

Part 309 of CWA provides significant penalties for any person who violates a permit condition implementing Parts 301, 302, 306, 307, 308, 318, or 405 of CWA or any permit condition or limitation implementing any such section in a permit issued under Part 402. Any person who violates any permit condition of this permit is subject to a civil penalty not to exceed \$27,500 per calendar day of such violation, as well as any other appropriate sanction provided by Part 309 of CWA.

3) Any person who violates 7 Del. C. Chapter 60 or any rule or regulation duly promulgated thereunder, or any permit condition or any order of the Secretary, shall be subject to the appropriate civil and administrative penalties pursuant to 7 Del. C. §6005 or criminal penalties pursuant to 7 Del. C. §6013.

S. Discharge of Pollutants

Any person who causes or contributes to the discharge of a pollutant into waters of the State or the United States either in excess of any conditions specified in this permit or in absence of a specific permit condition, shall report such an incident to the Department as required under 7 Del. C. §6028.

T. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is/are or may be subject under 7 Del. C. Chapter 60.

U. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation.

V. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

W. Construction Authorization

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

X. Fiscal Resources

The permittee shall provide the appropriate resources, including but not limited to finances, staff, equipment, and support capabilities, to comply with this permit, including but not limited to implementation of the SWPP&MP. The Permittee shall include in each annual report a demonstration of sufficient fiscal capability meet permit requirements.

Y. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and to the remainder of this permit, shall not be thereby affected.

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Part VI. Definitions

“**Act**” means the Federal Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or the Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub.L. 95-217, Pub.L. 95-576, Pub.L. 96-483, Pub.L. 97-117, Pub. L. 100-4 (the Water Quality Act of 1987), Pub. L. 100-688, Pub. L. 100-581, Pub.L. 102-580, Pub. L. 102-240; 33 U.S.C. 1251 §§ *et.seq.*

“**Best Management Practices**” (BMPs) means activities, prohibitions of activities, procedures, structures, and other means to prevent or reduce the discharge of pollutants. BMPs may also include treatment requirements, operating procedures and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs can be applied before, during or after pollution generating activities to reduce or eliminate the introduction of pollutants into receiving waters.

“**C.F.R.**” means the Code of Federal Regulations.

“**Co-Permittee**” refers to the entity that is applying for coverage under the Phase II MS4 General Permit in combination with other entities, which hold jurisdictional authority over a designated MS4 area.

“**Delegated Agency**” means the Conservation District, county, municipality, or State agency that has accepted responsibility in a jurisdiction for implementation of one or more elements of the Sediment and Stormwater Program as part of the Delaware Sediment and Stormwater Regulations within that jurisdiction.

“**Department**” means the State of Delaware Department of Natural Resources and Environmental Control.

“**Directly Connected Impervious Area**” refers to impervious area where the drainage of the related storm water runoff is routed to a storm water conveyance system or to a receiving body of water through channels, pipes, or other appurtenances, without interruption by vegetation or other pervious media.

“**Discharge**” for the purpose of this permit, when used without qualification, refers to the discharge of a pollutant.

“**Discharge of a Pollutant**” means any addition of any pollutant, or combination of pollutants, to State waters.

“**Existing Permittee**” means any permittee that has been operating under a Phase II MS4 Permit is by the Department.

“Effective Impervious Area” means a surface that does not readily permit liquid to infiltrate, such as asphalt streets, paved driveways, sidewalks, rooftops, which hydraulically connect to storm sewers, and parking lots.

“Illicit Discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except that which is sanctioned by a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and that which results from firefighting and other activities referenced in Part II.A.3. of this general permit.

“Low Impact Development” means an approach to land development (or re-development) that works with nature to manage storm water as close to its source as possible. Low impact development employs principles such as preserving and recreating natural landscape features, minimizing effective impervious areas to create functional and appealing site drainage that treats storm water as a resource rather than a waste product.

“Maximum Extent Practicable” for the purpose of this general permit, means using measures that are capable of being done after taking into consideration cost, feasibility, existing technology, and logistics in light of overall facility operations and project purposes.

“Minimum Control Measures” refers to the six programmatic elements that are expected to result in the reduction of the discharge of pollutants in receiving waters. The programmatic elements include: (1) Public Education, (2) Illicit Discharge Detection and Elimination, (3) Storm Water Management during Construction, (4) Post-Construction Storm Water Management, (5) Good Housekeeping/Pollution Prevention, and (6) Public Involvement. For the purposes of this general permit, Public Education and Public Involvement have been combined into one programmatic element.

“MS4” means a Municipal Separate Storm Sewer System.

“Municipal Separate Storm Sewer” means: (1) a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, pipes or storm drains) owned or operated by a city, town, county, district, association, or other public body created by or pursuant to State law having jurisdiction over the disposal of sewage, industrial waste, storm water, or other wastes, storm water management, drainage or flood control, which is: (2) designed or used for collecting or conveying storm water; (3) is not a combined sewer; and (4) which is not part of a publicly owned treatment works as defined at 40 C.F.R. § 122.2.

“Outfall” means a *point source* as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not

include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters and are used to convey waters of the United States.

“Permittees” refers to all of the entities listed on the Notice of Intent, and may include individual permittees, principal permittees and/or co-permittees.

“Person” means any individual, trust, firm, corporation (including a government corporation), partnership, association, institution, enterprise, state, municipality, commission, agency, political subdivision of a state or an interstate body, or an agent or employee thereof.

“Point Source” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

“Pollutant”, for the purpose of this general permit, means any substance, which causes or contributes to, or may cause or contribute to, the degradation of water, air, and soil resources or to the health of humans, animals, or aquatic life. Examples may include, but are not limited to excess nutrients, chemicals, toxic substances, industrial, municipal or agricultural wastes, etc.

“Pollution” or **“Water Pollution”** means the man-made or human-induced alteration of the physical, chemical, biological or radiological integrity of any State waters.

“Redevelopment”, including brownfield development, means any construction, alteration or improvement, including, but not limited to, the demolition or building of structures, filling, grading, paving, or excavating, where existing land use is residential, commercial, industrial, or institutional. Ordinary maintenance activities, remodeling of existing buildings, resurfacing of paved areas, and exterior changes or improvements are not considered to be redevelopment activities for the purposes of this general permit.

“SWPP&MP” means Storm Water Pollution Prevention and Management Program.

“Secretary” means the Secretary of the State of Delaware Department of Natural Resources and Environmental Control.

“Storm Water” means storm water run-on or runoff, snow melt runoff, surface runoff and drainage.

“Structural controls” means installed or constructed curbs, dikes, berms, walls, sheds, impervious pads, ditches, diversions or other structures which limit the contribution or transport of significant materials and pollutants to storm water.

“Total Maximum Daily Load” (TMDL) is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

“Waters of the State” or **“State Waters”** means all water, on the surface and under the ground, wholly or partially within, or bordering the State of Delaware, or within its jurisdiction including but not limited to:

- (a) Waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean;
- (b) All interstate waters, including interstate wetlands;
- (c) All other waters of the State, such as lakes, rivers, streams, (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sandflats, wetlands, sloughs, or natural or impounded ponds;
- (d) All impoundments of waters otherwise defined as Waters of the State under this definition;
- (e) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (a)-(d).

Waste and storm water treatment systems that would otherwise meet this definition are not “Waters of the State” or “State Waters”.

“Watershed” means the land area that drains water to a particular stream, river, or lake.

"Surface Water Quality Standards" means the most current version of the Delaware Surface Water Quality Standards as amended and as subsequently revised and incorporated by reference (7 Del. C. §7401).

Appendix A: Annual Report Template

All permittees shall submit an annual system-wide report based on the template below. In the first annual report, the permittees may propose changes to this template to better reflect actions taken in compliance with this permit.

The annual report shall include specific details to address the following items.

A. Permittee Updates

1. Copy of Appendix B for all permittees (Summary Report Form)
2. Status of inter-jurisdictional agreement(s) and notes from all associated meetings (if applicable)
3. Summary of activities completed during the reporting period. The summary should describe and quantify program activities, responsible parties, and achievement of permit requirements or measurable goals.
4. Planned Activities and Changes. This section should describe activities planned for the next year, highlighting any changes made to improve BMPs or program effectiveness.

B. SWPP&MP Category-Specific Content

1. Public education and involvement
 - a. Status of public outreach strategy and outreach activities
 - b. Status/results of public education surveys
 - c. Summary of public involvement activities and
 - d. Summary of past annual meeting or mandated workshops
2. Illicit discharge detection and elimination
 - a. Summary of illicit discharges reported and description of how incident was addressed
 - b. Report on illicit discharge detection and elimination public information or other measures taken and
 - c. Report on illicit discharge dry screening program results
3. Storm water management during construction
 - a. Summary of activities, including number of plans reviewed, total number of inspections conducted, total number of sites, and enforcement actions taken and
 - b. Statistics on how general permit requirements have been met, in addition to requirements set by the Delaware Sediment and Stormwater Regulations
4. Post-construction storm water management
 - a. Summary of number of maintenance inspections conducted and
 - b. Total number of BMPs (reported by jurisdiction)
5. Good housekeeping

- a. Updated inventory of all MS4 facilities owned or operated by permittee
 - b. Inspection schedule of those MS4 facilities
 - c. Summary of control measures taken to minimize the impacts of discharges from various sources as listed in permit
 - d. Summary of all street cleaning and catch basin cleaning operations, as specified in the SWPP&MP
 - e. Summary of program to limit infiltration from sanitary sewers into MS4
 - f. Summary of pesticide, herbicide, and fertilizer program
 - g. Summary of snow/ice program and
 - h. Summary of litter control program
 - 6. Industrial Storm Water
 - a. Updated inventory of industrial facilities
 - 7. Mapping
 - a. Summary and update of the storm sewer map
 - b. BMP data submitted and
 - c. Updated maps submitted
 - 8. TMDL Plans
 - a. Schedule and timeframe updates for the TMDL Plan
 - b. Summary of action(s) taken
 - c. Noted progress toward achieving TMDL goals and
 - d. TMDL Performance Monitoring Plan
 - i. Summary of monitoring data collected
 - ii. Analysis of data from the monitoring plan
 - 9. Summary of annual employee training as required by permit
- C. SWPP&MP Evaluation and Update
- 1. Status of program evaluation
 - 2. Status of any program modifications or updates